No. 80-169

IN THE

Supreme Court of the United States

October Term, 1980

UNITED PARCEL SERVICE, INC.,

Petitioner,

v.

WILLIAM MITCHELL,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR PETITIONER

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QUESTION PRESENTED

When an employee's discharge has been upheld in "final and binding" arbitration and the employee seeks to relitigate his discharge with his employer in the federal courts under Section 301 of the Labor Management Relations Act on the ground that the union failed him in its duty of fair representation, did not the court of appeals err in determining that the suit was governed by the six-year statute of limitations for actions on contracts and, therefore, was not barred by the ninety-day limitation on actions to vacate arbitration awards?

PARTIES IN THE COURT OF APPEALS

The parties in the court of appeals were United Parcel Service, Inc. (petitioner in this Court), William Mitchell (respondent in this Court), and Department Store and Wholesale Drivers, Warehousemen and Helpers, Local Union #177 (co-appellee with petitioner in the court of appeals).

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BRIEF FOR PETITIONER

Petitioner, United Parcel Service, Inc.,[1] hereby submits its brief on the merits in the above matter.

1. Pursuant to Supreme Court Rule 28.1, United Parcel Service states that it is a wholly owned subsidiary of United Parcel Service of America, Inc. United Parcel Service of America, Inc. is affiliated with Service Plants Corporation ("SPC"), a holding company whose subsidiaries (all wholly-owned) own and lease real estate to UPS. Owners of UPS capital stock own beneficial interests in SPC common stock.

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of New York (A. 128-A. 130),[2] granting defendants' motion for summary judgment, has not been officially reported. The opinion of the United States Court of Appeals for the Second Circuit (A. 132-A. 140), reversing the order of the district court, has been reported at 624 F. 2d 394 (2d Cir. 1980).

JURISDICTION

The judgment of the court of appeals was entered on March 3, 1980. (A. 5). United Parcel Service filed a timely petition for rehearing, which was denied on May 7, 1980. (A. 6). On August 5, 1980, within ninety days of the date the court of appeals denied the petition for rehearing, United Parcel Service filed a timely petition for a writ of certiorari. 28 U. S. C. § 2101(c); Supreme Court Rules 20.2 and 20.4.

The jurisdiction of this Court is invoked pursuant to 28 U. S. C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 301(a) of the Labor Management Relations Act of 1947, 29 U. S. C. § 185(a), provides in pertinent part as follows:

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2. References to the Joint Appendix shall be "A.," followed by the page number.

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount of controversy or without regard to the citizenship of the parties.

Section 12 of the United States Arbitration Act, 9 U. S. C. § 12, provides in pertinent part as follows:

> Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered.

Section 7511(a) of the New York Civil Practice Laws and Rules, N. Y. Civ. Prac. Law § 7511(a) (McKinney), provides as follows:

> When application made. An application to vacate or modify an award may be made by a party within ninety days after its delivery to him.

Section 213 of the New York Civil Practice Laws and Rules, N. Y. Civ. Prac. Law § 213 (McKinney), provides in pertinent part as follows:

> The following actions must be commenced within six years: . . .
>
> (2) An action upon a contractual obligation of liability express or implied, except as provided in Article 2 of the Uniform Commercial Code. . . .

STATEMENT OF THE CASE

Respondent William Mitchell ("Mitchell") was employed by petitioner United Parcel Service, Inc. ("UPS") as a car washer at UPS' facility in Staten Island, New York. He was discharged by UPS on January 13, 1977 for falsifying his time cards and claiming payment for hours which he did not work. Specifically, on six separate dates he submitted time cards showing that he had worked at least his full eight hours, despite the fact that on each date he had been observed by UPS supervisors leaving his job several hours prior to its completion. (A. 41).

Mitchell denied the charges against him and requested that his union, the Department Store and Wholesale Drivers, Warehousemen and Helpers, Local Union #177 (the "Union"), file a grievance against UPS on his behalf contesting the discharge. UPS and the Union are parties to a collective bargaining agreement which governs the bases upon which employment may be terminated and which contains a grievance and arbitration procedure for the resolution of disputes covered by the agreement. (A. 58-A. 61, A. 65-A. 67).

Pursuant to the collective bargaining agreement, Mitchell's grievance was submitted to a panel of the Atlantic Area Parcel Grievance Committee (the "Joint Panel"). Mitchell was represented by the Union at a full hearing on the grievance before the Joint Panel.

On February 16, 1977, the Joint Panel issued an award holding that UPS had not violated the agreement by discharging Mitchell and denied the grievance. (A. 74-A. 75). Under the terms of the collective bargaining

agreement, the decision of the Joint Panel upholding the discharge is final and binding. (A. 60, A. 66).[3]

Seventeen months after the Joint Panel sustained the discharge, Mitchell instituted this suit pursuant to Section 301(a) of the Labor Management Relations Act of 1947, 29 U. S. C. § 185(a), and **Hines v. Anchor Motor Freight, Inc.**, 424 U. S. 554 (1976). The complaint alleged that UPS had discharged Mitchell in violation of the collective bargaining agreement and that the Union had failed to represent him fairly in the grievance and arbitration process.

Under **Hines**, an employee contesting a discharge sustained by an arbitration award can prevail only if he establishes both that the discharge was contrary to the collective bargaining agreement and that the union's breach of its duty of fair representation "seriously undermine[d] the integrity of the arbitral process." 424 U. S. at 567.

The Decision of the District Court

Both UPS and the Union moved for summary judgment in the district court on the ground that the action was barred by the ninety-day statute of limitations for actions to vacate arbitration awards. N. Y. Civ. Prac. Law § 7511(a) (McKinney). The district court granted defendants' motion and dismissed the complaint, agreeing with the defendants that an action seeking reinstatement

3. Joint panel arbitration awards have the same legal effect for the purpose of the statute of limitations as awards rendered by individual arbitrators. *See, e.g.*, **Hines v. Anchor Motor Freight, Inc.**, 424 U. S. 554 (1976), in which the arbitration award at issue had been rendered by a joint area committee. *See also* **Humphrey v. Moore**, 375 U. S. 335 (1964); **General Drivers, Local Union No. 89 v. Riss & Co.**, 372 U. S. 517 (1963); **Walters v. Roadway Express, Inc.**, 557 F. 2d 521, 524 (5th Cir. 1977); **Barbarino v. Anchor Motor Freight, Inc.**, 421 F. Supp. 1003, 1006 (W. D. N. Y. 1976).

and damages following an adverse arbitration decision is properly characterized as a suit to vacate an arbitration award. The district court reasoned that the relief sought had been denied in an award "issued as a result of a full-scale, arbitration proceeding" and that the effect of any judicial relief "would be to vacate the determination of the arbitrators."

The district court rejected the argument that the ninety-day statute of limitations was "too short," in view of the fact that the federal Arbitration Act, 9 U. S. C. § 12, likewise provides a three-month statute of limitations. It also reasoned that the application of the ninety-day statute of limitations was consistent with the federal labor policy favoring relatively rapid resolution of labor disputes through final and binding arbitation.

The Decision of the Court of Appeals

On appeal, the court of appeals rejected the district court's characterization of the action as a suit to vacate an arbitration award and held that the six-year statute of limitations for contractual breaches, N. Y. Civ Prac. Law § 213(2) (McKinney), was applicable. Despite the fact that Mitchell's complaint sought the same relief (reinstatement with back pay) that had been denied him by the arbitration panel, the court of appeals held that the ninety-day statute of limitations governing proceedings to vacate arbitration awards was inapplicable. It reasoned that Mitchell's action was more in the nature of a breach of contract action than an action to vacate an arbitration award, in part because it believed that Mitchell lacked standing under state law to vacate an arbitration award. The court of appeals therefore reversed the district court's dismissal of the action.

SUMMARY OF ARGUMENT

Since Section 301 of the Labor-Management Relations Act does not contain its own statute of limitations, the federal courts in suits brought under that section must apply the appropriate state statute of limitations, while at the same time making sure that application of the state statute of limitations does not frustrate federal labor policy. The ninety-day New York state statute of limitations for proceedings to vacate arbitration awards is the most appropriate limitations period to apply, since Mitchell's action seeks in effect to overturn an adverse arbitration decision. Moreover, application of a six-year statute of limitations would frustrate labor policy by undermining the economy, speed and desirability of arbitration and by permitting the tardy assertion of claims seeking to overturn arbitration awards. In many arbitrations, highly significant and overriding concerns are involved, and six-year delays would be intolerable as a standard in labor-management relations.

ARGUMENT

I. Since Mitchell Can Prevail in This Action Only by Having the Arbitration Award Overturned, the Court of Appeals Erred in Failing to Characterize the Action, for Purposes of the Statute of Limitations, as One to Vacate an Arbitration Award.

In suits brought pursuant to Section 301 of the Labor-Management Relations Act, a federal district court must apply the relevant statute of limitations of the state in which it sits, since Congress never enacted any federal statute of limitations for such suits. As this Court has held, "the timeliness of a § 301 suit . . . is to be determined, as a matter of federal law, by reference to the appropriate state statute of limitations." **International Union, UAW v. Hoosier Cardinal Corp.**, 383 U. S. 696, 704-05 (1966).

The issue before this Court is whether the ninety-day statute of limitations contained in Section 7511(a) of the New York Civil Practice Laws and Rules applies, as petitioner urges, or the six-year statute of limitations contained in CPLR § 213, as the court of appeals held. The former statute of limitations applies to proceedings "to vacate or modify" an arbitration award, whereas the latter applies to actions "upon a contractual obligation of liability express or implied . . ."

The court of appeals erred in failing to apply the ninety-day statute of limitations contained in CPLR § 7511(a), since Mitchell's action against UPS properly can be characterized only as an action to vacate an arbitration award. Mitchell's suit alleges the same wrong by UPS (breach of the collective bargaining agreement's requirement that an employee may be discharged only for just cause) that he alleged without success in arbitration,

and he seeks the same relief (reinstatement with full back pay) denied him by the arbitration panel. Thus, in order for him to prevail in his action, he necessarily will have to persuade the court to vacate the "final and binding" decision of the Joint Panel. *See* **Hines v. Anchor Motor Freight, Inc.**, 424 U. S. 554 (1976).

In enacting CPLR § 7511, the State of New York adopted a policy in support of the finality of arbitration, requiring that any challenge to an arbitration award be made expeditiously. That this policy is applicable here is manifest from the statutory language. Among the grounds for vacating an arbitration award set forth by CPLR § 7511 are "corruption, fraud or *misconduct in procuring the award.*" (Emphasis added).[4] Mitchell's claim is premised on the allegation that the Union's misconduct in prosecuting his grievance before the Joint Panel entitles him to a judgment that would vacate the Panel's award.

In its purpose, Mitchell's lawsuit is indistinguishable from an action under CPLR § 7511 to vacate an arbitration award. A former employee should not be allowed to prosecute a claim seeking in essence an order vacating an arbitration award, and hence to circumvent the limitations provision of CPLR § 7511, through the expedient of camouflaging his allegations and avoiding use in his complaint of the specific words "vacate the arbitration award." Here, as in **Liotta v. National Forge Co.**, — F. 2d —, 105

4. Both the grounds and time limit for vacating an arbitral award under the federal Arbitration Act are likewise limited. 9 U. S. C. § 10 provides that an award may be vacated, *inter alia*, where it was procured by corruption, fraud or undue means or where "the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon good cause shown." 9 U. S. C. § 12 requires that motions to vacate be served within three months of the date of the award.

LRRM 2636 (3d Cir. Sept. 10, 1980), which reached a result contrary to that reached in the case now under review,[5] "a fair reading of [the employee's] complaint demonstrates that he seeks to vacate the arbitrator's decision" since "he sought to litigate before the district court the same claim he presented for arbitration, that of improper discharge." The court in **Liotta** continued:

> Moreover, the fact that Liotta alleges that the arbitration award is invalid due to the Union's breach of its duty of fair representation does not change the limitations period because the suit here is against the Company and not the Union. *Thus, it is clear that Liotta was dissatisfied with and simply seeks to upset*

5. A vast majority of the lower court decisions (including several district court decisions in the Second Circuit which were overruled by the decision of the court below) support petitioner's position and reached results contrary to that of the court below. *See, e.g.*, **Local 800 v. Lakeshore Motor Freight Co.**, 102 LRRM 2046 (W. D. Pa. 1979) (applying Pennsylvania's three-month limitation period); **Pizzuto v. Hall's Motor Transit Co.**, 409 F. Supp. 427 (E. D. Va. 1976) (federal Arbitration Act's three-month limitation); **DeLorto v. United Parcel Service, Inc.**, 401 F. Supp. 408 (D. Mass. 1975) (Massachusetts' thirty-day limitation); **UMW v. Jones & Laughlin Steel Corp.**, 378 F. Supp. 1206 (W. D. Pa. 1974) (Pennsylvania's three-month limitation); **Lunceford v. Western Conference of Teamsters**, 87 LRRM 2011 (C. D. Calif. 1974) (California's 100-day limitation); **Teamsters Local 249 v. Motor Freight Express, Inc.**, 356 F. Supp. 724 (W. D. Pa. 1973) (Pennsylvania's three-month limitation); **Howerton v. J. Christenson Co.**, 76 LRRM 2937 (N. D. Calif. 1971) (California's 100-day limitation). *See also* **Teamsters, Local 135 v. Jefferson Trucking Co.**, 628 F. 2d 1023, 1027 (7th Cir. 1980) (holding that, in action by union to enforce arbitration award, employer had waived defense by failing to move to vacate award within three month period established by Indiana law). *But see* **Smart v. Ellis Trucking Co.**, 580 F. 2d 215 (6th Cir. 1978), *cert. denied*, 440 U. S. 958 (1979).

the arbitrator's decision that the Company did not wrongfully discharge him.

105 LRRM at 2637 (emphasis added).[6]

The court of appeals in the instant case held that Section 301 suits following arbitration awards could not be characterized as actions to vacate those awards, to which the ninety-day statute of limitations contained in CPLR § 7511(a) must be applied. Instead, relying on its reading of this Court's decision in **Hines v. Anchor Motor Freight, Inc.**, 424 U. S. 554 (1976), the court of appeals concluded that, despite the presence of an intervening arbitration award, the action was merely one for breach of an employment contract. However, it is more consistent with **Hines** to characterize Section 301 suits filed after adverse arbitration awards as suits to vacate such awards. This Court in **Hines** did not describe the issue before it in terms of the underlying contractual protections against wrongful discharge. Instead, the majority opinion, as well as the concurring and dissenting opinions, all described the issue as one of determining the conditions under which the finality provisions of the arbitration provisions of the collective bargaining agreement must be enforced. *See* 424 U. S. at 560-61, 567, 571 (opinion of the Court), 572 (concurring opinion of Justice Stewart); 575 (dissenting opinion of Justice Rehnquist).[7] The issue in this case and simi-

6. The opinion in **Liotta** is reprinted in the appendix to the Supplemental Brief in Support of Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit, which UPS filed on September 25, 1980.

7. Similarly, in **Humphrey v. Moore**, 375 U. S. 335 (1964), which formed one basis for the decision in **Hines**, this Court phrased the issue as "whether the Kentucky Court of Appeals properly enjoined implementation of the decision of a joint employer-employee committee purporting to settle certain grievances . . . ." 375 U. S. at 336.

lar cases, then, is whether and under what circumstances an arbitration award rendered pursuant to a collective bargaining agreement will be set aside, and not whether the courts will enforce contractual provisions against wrongful discharge. Thus, the decision of the court of appeals reflects a misreading in this Court's decision in **Hines** which, as noted in Part II *infra*, threatens widespread damage to labor-management relations.

Moreover, the decision of the court below flies in the face of the familiar canon of statutory construction that, in the event of a conflict between a general statute and a more specific statute, the more specific statute applies in the absence of evidence of contrary legislative intent. *See, e.g.*, 2A Sutherland, **Statutes and Statutory Construction,** § 51.05 (Sands rev. ed. 1973). As this Court held in **Morton v. Mancari,** 417 U. S. 535, 550-51 (1974): "Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, . . ." *See also* **Radzanower v. Touche Ross & Co.,** 426 U. S. 148 (1976) (specific venue provision of the National Bank Act prevails over the general venue provision in the Securities Exchange Act), and **Preiser v. Rodriguez,** 411 U. S. 475, 488-90 (1973) (more specific habeas corpus remedy takes precedence over the general terms of 42 U. S. C. § 1983).

An instructive case applying this principle in the context of statutes of limitation is **Lashlee v. Sumner,** 570 F. 2d 107 (6th Cir. 1978), which held that, in an action alleging libel, negligence, interference with contractual relations and intentional infliction of emotional distress, the entire action was subject to the specific statute of limitations for libel because the gist of the action was for libel. Applying Kentucky law, the court held that "a specific statute of limitations covers all actions whose real pur-

pose is to recover for the injury addressed by it in preference to a general statute of limitations." *Id.* at 109.

In the case at bar, it is evident that CPLR § 7511(a) is more specific than the general breach of contract statute of limitations, and that it is applicable because the "gist" and "real purpose" of Mitchell's action is to vacate the award of the Joint Panel. Since CPLR § 7511(a) addresses Mitchell's action more specifically than does New York's six year statute of limitations for breach of contracts, CPLR § 7511(a) should govern.

In rejecting petitioner's reliance on CPLR § 7511, the court of appeals also reasoned that Mitchell would not have had standing to bring an action to vacate the arbitration award under New York law and that the limitation period provided by CPLR § 7511 was therefore inapplicable to this Section 301 action. (A. 138). Whether or not the court of appeals' analysis of New York law was correct, its reasoning is at odds with basic principles of federal law. This case is before the federal courts on Mitchell's claim of Section 301 jurisdiction. Section 301, as interpreted in **Vaca v. Sipes,** 386 U. S. 171 (1967), and **Smith v. Evening News Association,** 371 U. S. 195, 198-200 (1962), grants him standing to maintain the instant action. Thus, Mitchell's standing is not at issue; the issue, rather, is which of two *statutes of limitations* is more appropriate.

In applying a state statute of limitations, "federal courts borrow only the chronometric aspects and not the procedural or substantive nuances of the law of the forum." **Wolf v. Frank,** 477 F. 2d 467, 475 (5th Cir.), *cert. denied,* 414 U. S. 975 (1973). Furthermore, the federal court is not applying state law. Rather, "[i]n borrowing a state period of limitation for application to a federal cause of action, a federal court is relying on the State's wisdom in setting a limit, and exceptions thereto,

on the prosecution of *a closely analogous* claim." **Johnson v. Railway Express Agency, Inc.**, 421 U. S. 454, 464 (1975) (emphasis added). As this Court stated in **International Union, UAW v. Hoosier Cardinal Corp.**, *supra*, "the characterization of this action for the purpose of selecting the appropriate state limitations is ultimately *a question of federal law.*" 383 U. S. at 706 (emphasis added). Thus, the question in this case (which, as noted above, must be answered in the affirmative) is whether *as a matter of federal law* this Court should characterize Mitchell's action as one to vacate an arbitration award, not whether Mitchell would have had standing had he brought suit in state court.

In sum, the instant case is nothing more than a belated application to set aside the decision of the Joint Panel, as the district court properly concluded. Since Mitchell did not commence this lawsuit until more than fourteen months after the statutory time limit expired, the decision of the court of appeals should be reversed.

II. By Permitting Attacks on Arbitration Awards Years After They Are Made, the Decision of the Court of Appeals Threatens Federal Labor Policy.

Congress and this Court have expressly endorsed contractual arrangements to resolve labor disputes. Section 203(d) of the Labor Management Relations Act, 1947, 29 U. S. C. § 173(d) (1978), states in pertinent part:

> Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement. . . .

Similarly, this Court has affirmed the importance of arbitration as "a stabilizing influence" necessary to effectuate industrial self-government and labor peace.[8] It has endorsed final and binding arbitration as "the substitute for industrial strife" and as "a major factor in achieving industrial peace."[9] The value placed by this Court on arbitration in the labor-management field is evident from the extremely limited scope of judicial review accorded arbitration awards.[10] Consequently, parties to collective agreements rely on the finality of arbitration as protection from litigation of labor disputes.

The importance of finality in arbitration has been almost universally recognized. Not only does the Federal Arbitration Act provide a ninety-day statute of limitations, but 42 states have special short limitations for actions to vacate arbitration awards, 28 of them ninety days and nine of them even shorter.[11] Similarly, as the cases cited in note 5 indicate, apart from the decision below and a similar decision in the Sixth Circuit, all of the courts which have faced the issue have resolved the question in favor of the short arbitration statute of limitations in Section 301 cases following arbitration awards.

The reason is clear. Labor-management relations depend upon the quick and final resolution of the multitude of disputes which occur almost daily in the relationship between employees, union, and employer. Often these questions involve contract interpretations with

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8. *See, e.g.*, **United Steelworkers v. American Mfg. Co.**, 363 U. S. 564, 567 (1960); **United Steelworkers v. Warrior & Gulf Navigation Co.**, 363 U. S. 574, 580, 581 (1960).

9. **Warrior & Gulf**, *supra*, 363 U. S. at 578.

10. *See* **United Steelworkers v. Enterprise Wheel & Car Corp.**, 363 U. S. 593, 596 (1960).

11. *See* A. 18-A. 19 of Appendix to UPS's Petition for a Writ of Certiorari.

broad impact; always they involve grievances which, absent arbitration, would threaten strikes. If arbitration awards remain subject to challenge for six years, the necessary prompt resolution of disputes will not be available.

A. A Six-year Statute of Limitations Would Seriously Detract from the Speed, Economy and Fairness of Arbitration, and Hence Discourage Arbitration as a Means of Resolving Labor Disputes.

In **Hines v. Anchor Motor Freight, Inc.**, 424 U. S. 554 (1976), this Court created a limited exception to the finality of arbitration awards, holding that the bar to finality is lifted only when the process culminating in an arbitration award has been fundamentally subverted as a result of a union's breach of its duty of fair representation. So long as challenges to arbitration awards must be brought promptly, this exception does not undermine the strong federal policy favoring arbitration as a means of resolving labor disputes. However, a six-year statute of limitations on actions which permit relitigation of matters which had been resolved by arbitration takes away the principal benefits of arbitration as a means of resolving labor disputes—speed, economy, and fairness. Employers surely will become less willing to arbitrate disputes if they know that they can be faced with claims seeking up to six years of back pay even after they have prevailed in arbitration. Furthermore, discharged employees effectively could nullify arbitration awards merely by waiting six years to bring suit. By that time the reality of faded memories, lost records, litigation costs and potential monetary liability of six years of accumulated back pay might force an employer, even though it had prevailed at arbitration, to settle for an amount exceeding what an arbi-

trator could have awarded.[12] Under the court of appeals' decision, simply by alleging the absence of fair representation, an employee can impose on employer and union alike the cost of extensive litigation years after both believed the issue had been finally resolved.

The application of a six-year limitation period to **Hines** actions thus will undermine the stability of the private settlement machinery and increase the likelihood of industrial strife. If a discharged employee were to succeed and be reinstated some six years after his discharge, his victory might impinge on the legitimate expectations of other employees, as by requiring the displacement of the employee who filled the plaintiff's job for the six year period following his discharge. Furthermore, if arbitration awards remain open to relitigation for six years, parties to the labor contract may well be unsure as to the meaning of its terms for that period. For example, even if an arbitrator were to hold that a particular type of conduct constituted "just cause" for a discharge under the collective bargaining agreement, an employer for six years still could not safely discharge other employees guilty of the same conduct. In short, an employer can rely on arbitration awards only at its peril until six years have passed.

This uncertainty as to the meaning of contractual language will make contract negotiations more difficult. Grievances that are not finally resolved for six years may create industrial unrest, and disaffected employees have more time to bring suit to harass both employer and union. On a more practical every day level, prevailing in an arbitration means little. Every time the employer wins

12. In the instant case, the Joint Panel rendered its decision approximately one month after Mitchell's discharge. Had the Joint Panel awarded him complete relief, UPS's monetary liability would have been only one month of back pay.

an arbitration, neither the union nor the company can safely destroy its files for six years; the union must remain prepared to prove that it fairly represented its member, and the company that its actions which led to the arbitration were proper.

Finally, the decision of the court of appeals takes a substantial element of fairness out of the arbitration of grievances. If the employer loses the arbitration, it has ninety days to challenge the award.[13] By contrast, if it prevails in the arbitration, it must be prepared to relitigate the issue for six years. For the employee, a favorable decision is final after three months; for the employer, a favorable decision does not become final until six years after the incident that had been arbitrated.

Since under the court of appeals' decision arbitration will retain its quality of expeditious finality only when the employer loses, it is reasonable to expect that many employers will abandon or sharply curtail labor arbitration as a means of resolving disputes. As a result, labor disputes which traditionally have been decided by arbitration will increasingly be fought out in the streets, through strikes and other work disruptions, and in the courts.

Even if this scenario does not result from the decision below, the absence of arbitral finality will place a severe strain on management-union relations. The myriad disputes which the parties in the past have been able to resolve by expeditious and final arbitration now will be suspended in limbo for six years while aggrieved employees decide whether to challenge the award in court. Such arbitrations are not limited to relatively simple discharge claims. They may involve a class of grievants, and the results may directly affect the employment or seniority status of hundreds, and perhaps thousands, of

13. *See, e.g.*, **Teamsters Local 135 v. Jefferson Trucking Co.**, 628 F. 2d 1023 (7th Cir. 1980).

employees. Under the court of appeals' decision, management and the union will no longer be able to obtain an expeditious and final resolution of such disputes.

B. The Court of Appeals' Decision Is Contrary to Federal Labor Policy, Which Encourages Prompt Resolution of Employee Grievances.

Both this Court and Congress have recognized the wisdom of requiring prompt resolution of employee grievances. As this Court stated in **International Union, UAW v. Hoosier Cardinal Corp.**, 383 U. S. 697, 707 (1966):

> [R]elatively rapid disposition of labor disputes is a goal of federal labor law. Since the state statutes of limitations governing contracts not exclusively in writing are generally shorter than those applicable to wholly written agreements, their applicability to § 301 actions comports with that goal.

See also **Liotta v. National Forge Company**, — F. 2d —, 105 LRRM 2636, 2637 (3d Cir. Sept. 10, 1980), and **Teamsters, Local 135 v. Jefferson Trucking Co.**, 628 F. 2d 1023, 1027 (7th Cir. 1980).

The court of appeals based its conclusion in part on an erroneous reading of this Court's opinion in **Hoosier Cardinal.** First, the court construed **Hoosier Cardinal** as indicating that a six-year statute of limitations "adequately furthered" the federal policy in favor of rapid resolution of labor disputes. However, the only issue before this Court in **Hoosier Cardinal** was whether the appropriate statute of limitations was twenty years (as plaintiffs argued) or six years (as defendants argued). Given that choice, the Court found six years applicable. Since **Hoosier Cardinal** did not involve an action seeking to overturn an arbitration award, the impact of a six-year

statute of limitations on the federal policy of encouraging arbitration was not at issue. The court of appeals also erred in relying on a footnote in **Hoosier Cardinal** (383 U. S. at 707 n. 9), which stated that "[o]ther questions would be raised" if "an unusually short or long limitations period" were applicable to a Section 301 action to recover employee vacation pay. Since **Hoosier Cardinal** did not involve a challenge to an arbitration award, the Court in that case did not give any indication as to how such "questions" might be resolved where, as here, the action follows an arbitration award.

The court of appeals also reasoned that it was "unwarranted" to require a discharged employee to obtain new counsel and file a lawsuit within ninety days of the arbitration award.[14] As an initial matter, the court's reasoning is seriously flawed in light of the circumstances of this case, since Mitchell in fact engaged counsel on February 16, 1977, the date the Joint Panel rendered its award. (A. 72). Moreover, the court of appeals overlooked the fact that, where Congress has enacted statutes of limitations for actions in the employment area (as it has not done for actions arising under Section 301), it uniformly has chosen short statutes of limitations. Thus, had Mitchell filed an unfair labor practice charge with the National Labor Relations Board claiming that the Union's conduct in this case constituted a breach of its

14. Actually, the court of appeals stated: "To require an employee—who is suddenly out of work—to obtain new counsel and file an action against his union and employer all within 90 days *of his discharge* strikes us as unwarranted." (A. 138) (emphasis added). In so posing the question, the court of appeals clearly was mistaken. Petitioner never urged that Mitchell had to file suit within ninety days of his discharge; rather, petitioner argues that Mitchell had to file suit within ninety days of the date of the *arbitration award.*

duty of fair representation, he would have been bound by a six-month statute of limitations. *See* 29 U. S. C. § 160(b). Similarly, under Title VII of the Civil Rights Act of 1964, a plaintiff must file his lawsuit within ninety days of exhausting administrative remedies with the Equal Employment Opportunity Commission. *See* 42 U. S. C. § 2000e-5(f)(1).[15] Since Congress obviously believes that ninety days is a sufficient period of time for a layman to obtain a lawyer and file a Title VII action after unsuccessful exhaustion of administrative remedies, the court of appeals erred in concluding that it was "unwarranted" to require a discharged employee to file an action within ninety days after unsuccessful exhaustion of contractual remedies.

Finally, in connection specifically with arbitration awards, Congress likewise has clearly expressed its intent that suits to vacate such awards be brought promptly. *See* United States Arbitration Act, 9 U. S. C. § 12, which provides a three month statute of limitations.[16] Thus, if this

15. Attempted exhaustion of contractual remedies (*i.e.*, resort to the grievance-arbitration machinery) is just as much a prerequisite to a Section 301 action as exhaustion of administrative remedies is a prerequisite to a Title VII action. *Compare* **Republic Steel Corp. v. Maddox,** 379 U. S. 650 (1965), *with* **Love v. Pullman,** 404 U. S. 522, 523 (1972), *and* **McDonnell Douglas Corp. v. Green,** 411 U. S. 792, 798 (1973). Thus, the ninety-day period provided in CPLR § 7511 is closely analogous to the ninety-day period provided in 42 U. S. C. § 2000e-5(f)(1).

16. Because of this Court's mandate in **Hoosier Cardinal** that a federal court should look to *state* law in determining the appropriate statute of limitations in Section 301 actions, the principal focus of the arguments below and in this Court has centered on which of two New York state statutes of limitations is applicable. UPS notes, however, that despite the ambiguous exclusionary language in 9 U. S. C. § 1 (excluding from the scope of the federal Arbitration Act arbitration of disputes arising under contracts of

Court were to look to the United States Arbitration Act "for guidance," as the court did in **Pizzuto v. Hall's Motor Transit Co.**, 409 F. Supp. 427 (E. D. Va. 1976), it should agree that a limitations period of three months is appropriate.

In sum, the court of appeals decision places a severe strain on collective bargaining and causes considerable confusion as to the meaning of contractual terms by precluding the parties from being able to rely on arbitration awards for a six year period. Furthermore, affirmance of the decision below not only would threaten the arbitration process by making arbitration a much less desirable and useful vehicle for resolving disputes in the field of collective bargaining, but also would be contrary to the recognition by this Court and by the Congress that disputes in the employment and arbitration contexts should be resolved promptly.

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16. (Cont'd.)

employment), several courts have held that the federal Arbitration Act applies to arbitration of grievances arising under collective bargaining agreements. *See, e.g.*, **Local 205, Electrical Workers v. General Electric Co.**, 233 F. 2d 85, 100 (1st Cir. 1956), *aff'd on other grounds*, 353 U. S. 547 (1957); **Communications Workers v. Pacific Telephone Co.**, 462 F. Supp. 736 (C. D. Calif. 1978).

CONCLUSION

For the foregoing reasons, petitioner respectfully requests this Court to reverse the judgment of the court of appeals and to direct the reinstatement of the judgment of the district court that had dismissed the complaint with prejudice.

Respectfully submitted,

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